

**CALIFORNIA EMERGENCY MANAGEMENT AGENCY (Cal EMA)
INITIAL STATEMENT OF REASONS**

**CALIFORNIA CODE OF REGULATIONS
TITLE 19. PUBLIC SAFETY
DIVISION 2. OFFICE OF EMERGENCY SERVICES
CHAPTER 6, CALIFORNIA DISASTER ASSISTANCE ACT**

General Problem Statement:

In accordance with Title 2, Division 1, Chapter 7.5, Section 8692 (e) of the Government Code (Govt. Code), Cal EMA shall adopt regulations to govern the administration of the newly enacted Article 6, Nonprofit Organizations.

The California Disaster Assistance Act (Act) was recently amended by Assembly Bill 903 – Chapter 400; approved by the Governor on October 10, 2007 [Title 2, Division 1, Chapter 7.5, of the Govt. Code] to require the Secretary of the Cal EMA to administer a program that provides state financial assistance as reimbursement to private nonprofit organizations (PNPs) for the distribution of supplies and other emergency or disaster assistance activities resulting in extraordinary costs. Prior to this amendment, the program provided state financial assistance to local agencies. For the purposes of the program, a PNP is defined as any private not for profit organization that is compliant with Title 44 of the Code of Federal Regulations (44 CFR) Section 206.221(7) (f). The program may be implemented only in the event of a Governor’s State of Emergency Proclamation.

General Purpose Statement:

The existing regulations (Title 19, Division 2, Chapter 6 of the California Code of Regulations (19 CCR) Sections 2900 – 2990) describe the implementation of the program under the Act for local agencies. Local agencies have the jurisdictional authority and responsibility to provide emergency response and recovery activities to an impacted community.

With the increased impact of emergency management activities on local government coupled with the current economic climate, it has become critical to rely on a holistic community approach to emergency response and recovery. In order to promote this community effort, the Governor and the Legislature have provided a mechanism by statute to reimburse PNPs for their extraordinary emergency activities and disaster relief costs.

These proposed regulations are necessary to implement PNP eligibility for state financial assistance as mandated in Section 8692 of the Act. These regulations are consistent with the current practices for reimbursement to local agencies while providing the specificity and flexibility necessary for PNPs to recoup their extraordinary costs for emergency or disaster activities.

For example, Govt. Code Section 8685.2 requires local agencies to proclaim a local emergency within 10 days of an incident in order to qualify for state financial assistance under the Act. However, PNPs have neither the responsibility nor the authority to proclaim a local emergency.

Specifically, Cal EMA proposes to add new sections to 19 CCR beginning with Section 3000 as detailed in the table beginning on page 3.

Technical, Theoretical, and/or Empirical Study, Reports, or Documents:

Unless otherwise stated in a particular regulatory section, Cal EMA did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the changes to these regulations.

Description Of Alternatives Considered And The Reasons For Rejecting Such Alternatives:

Pursuant to Govt. Code Section 8692(e), Cal EMA is specifically mandated to adopt regulations to implement the statute.

Alternatives To The Proposed Regulatory Action That Would Lessen Any Adverse Impact On Business:

The statute and regulations implemented by Cal EMA have no impact on businesses in California. The proposed regulations would provide a mechanism to allow eligible PNPs to receive state financial assistance as reimbursement for extraordinary costs during a state of emergency as proclaimed by the Governor.

Section Number	Public problem, administrative requirement, or other condition or circumstance the amended regulation is intended to address:	Specific purpose and necessity of the amended regulation:	Technical, theoretical, and/or empirical studies, reports, or documents
3000(a)	The regulations contain no definition of “essential community services.”	Utilizing and defining the term “essential community services” will provide clarity and consistency for the PNP activities eligible for state financial assistance under this section.	Title 44 of the Code of Federal Regulations (44 CFR), Section 206.62(c)(1)
3000(b)	The regulations currently contain a definition of “hazard mitigation” but the definition is specific to the state Public Assistance Program.	Defining ‘hazard mitigation’ as it relates to the PNP activities program is required for clarity of eligibility requirements within Section 3030(b).	
3000(c)	The regulations contain no definition of “private nonprofit organizations.”	The definition of PNP is required as the statute specifically addresses PNP organizations.	44 CFR Section 206.221(7)(f); U.S. Internal Revenue Code, Section 5019(c), (d) or (e).
3010	The regulations contain no General Provisions that apply to PNP applicants.	This section provides a description of the general provisions applicable to all PNP applicants. The PNP applicant must meet all eligibility requirements described in this section. A state of emergency must have been proclaimed by the Governor after the effective date of the regulations. PNP activities must meet the definition of “essential community services.” No PNP activities resulting from self deployment will be eligible for reimbursement. Eligibility will be limited to six (6) months following the Governor’s proclamation unless an extension is approved by Cal EMA. The PNP applicant must utilize the application process also described in this section.	Consistent with but separate from provisions in Title 19 of the California Code of Regulations (19 CCR), Chapter 6.

Section Number	Public problem, administrative requirement, or other condition or circumstance the amended regulation is intended to address:	Specific purpose and necessity of the amended regulation:	Technical, theoretical, and/or empirical studies, reports, or documents
3020	The regulations currently contain no description of PNP applicant eligibility requirements.	This section provides the specific elements required for PNP applicant eligibility. A PNP must meet the federal definition of a private, not for profit organization. A PNP must have a written agreement with a local agency or the state to provide essential community services as defined in Section 3000(a). In addition, a PNP must not use public funds to provide religious content in the provision of emergency assistance activities as described in statute.	44 CFR Section 206.62(c)(1); Govt. Code Section 8607(e); Govt. Code Section 8692(d); Earthquake Recovery: A Survival Manual for Local Government
3030	The regulations contain no description of requirements for eligible PNP activities.	This section provides the specific elements required for PNP activities eligibility. PNP activities must be requested by a local agency or the state and completed within a timeframe established by the requesting agency. The activities must support the community affected by an emergency or disaster. Eligible PNP activities must comply with civil rights laws and must be free of religious content. Ineligible PNP activities include hazard mitigation, repair or permanent restoration to damaged facilities or real property.	Govt. Code Section 8607(e); Govt. Code Section 8692(a) and (d); Debris Removal: Title 19 Section 2925

Section Number	Public problem, administrative requirement, or other condition or circumstance the amended regulation is intended to address:	Specific purpose and necessity of the amended regulation:	Technical, theoretical, and/or empirical studies, reports, or documents
3040	The regulations contain no description of cost eligibility requirements.	Only documented extraordinary costs are eligible for reimbursement under this section. No state financial assistance will be provided for activities prohibited by federal and state constitution, law or regulations. In addition, no state reimbursement will be provided for any donated resource. No reimbursement will be provided for vouchers, debit cards or other monetary relief provided to the community affected by the emergency or disaster. Since PNPs are required to document extraordinary costs for reimbursement, donated resources, including monetary donations, are of no cost to the PNP. Reimbursement for damages caused by negligence or intentional acts will not be eligible under this section, and no funds can be used to supplant other state or federal funds.	Govt. Code Section 8692(a) [extraordinary costs]; Govt. Code 8690.6(e) [supplanting language]; 44 CCR 2910(g) [administrative allowance allocated to local agencies]
3050(a)	The regulations contain no prescribed application process for PNPs to obtain state financial assistance under this section for essential community services.	To be consistent with the application process for local agencies, a similar process has been developed for PNPs. A completed PNP application must be submitted to Cal EMA within 60 days after the date of the Governor's Proclamation. This date is consistent with the local agency program and may be extended by the Cal EMA Secretary for unusual circumstances. The PNP applicant must also submit a resolution designating an authorized representative. This resolution is also consistent with the requirements for local agencies.	19 CCR, Section 2970(a)(4)

Section Number	Public problem, administrative requirement, or other condition or circumstance the amended regulation is intended to address:	Specific purpose and necessity of the amended regulation:	Technical, theoretical, and/or empirical studies, reports, or documents
3050(b)	The regulations contain no prescribed claims process for PNPs to obtain state financial assistance under this section for essential community services.	<p>A PNP must submit an activities claim to Cal EMA within 60 days of the completion of all eligible activities. The time frame is consistent with that required of local agencies.</p> <p>State Reimbursement Rate: The state shall provide one hundred (100) percent of the total cost of eligible PNP activities.</p> <p>Threshold for Reimbursement: The state shall make no allocation less than \$1,000 for eligible PNP costs. This threshold is lower than the threshold of \$2,500 for local agencies in order to decrease the financial burden of extraordinary costs of PNP organizations when performing essential community services following an emergency or disaster.</p> <p>The PNP has the right to a fair hearing if the state allocation is less than the total costs submitted.</p>	<p>19 CCR, Section 2980(a)</p> <p>Govt. Code 8685.6; 19 CCR, Section 2970(e)</p> <p>Govt. Code 8686(d) [threshold described for local agencies] 19 CCR, Section 2970(e)</p>
3050(c)	The regulations contain no prescribed partial payment process for PNPs to obtain state financial assistance under this section for essential community services.	The current regulations provide a process for local agencies to submit a reimbursement request for partially completed projects. In order to ensure that PNP applicants have a similar option, Cal EMA has included a provision for partial payment when PNPs provide sustained operations and they can demonstrate financial hardship.	19 CCR, Section 2970(d)
3060	The regulations contain no prescribed fair hearing process for PNPs to obtain state financial assistance under this section for essential	Consistent with local agency provisions, PNP applicants have the right to a fair hearing. However, determination authority has been changed to reflect	19 CCR, Section 2990

Section Number	Public problem, administrative requirement, or other condition or circumstance the amended regulation is intended to address:	Specific purpose and necessity of the amended regulation:	Technical, theoretical, and/or empirical studies, reports, or documents
	community services.	the organization of the newly formed Cal EMA.	
3070, 3080, 3090	The regulations contain no prescribed audits and documentation requirements for PNP applicants receiving state grant assistance.	Audits, Retention Requirement for Records, and Original Source Documentation all mirror the provisions for local agencies.	19 CCR, Sections 2980(d), (e),(f)